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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,042	06/28/2001	Dane R. Jackson	460.2125USU	5504

7590 01/28/2003

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EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 01/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/894,042

Applicant(s)

JACKSON ET AL.

Examiner

Dennis Ruhl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7,9-14,16-20,22,23 is/are rejected.
- 7) ☒ Claim(s) 3,8,15 and 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Pri ority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12-12-02 (After Final amdt. originally filed 10-22-02) has been entered.

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,4,5,7,9-14,16-20,22-23, are rejected under 35 U.S.C. 102(b) as being anticipated by Lichstein et al. (4536178) .

With respect to claims 1,2,7,9-12, Lichstein discloses a barrel 16 that has a fingergrip area 32. The plunger is 18. The fingergrip area has two flattened surfaces 30. The gripping structure is considered to be embossments 36. Structures 36 are raised above the flat surface 30; therefore, they satisfy the markush member of embossments. Embossments 36 tilt away from the flat surface. Lichstein discloses a rectangular cross sectional shape to the same extent that the instant application discloses a rectangular cross section shape.

With respect to claims 4,5 the 2 angled surfaces are 34.

With respect to claims 13,14,16-18, Lichstein discloses a barrel 16 with a gripping area 32. The gripping area has two convex surfaces which are the portions of

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32 that are convex (between the flat surfaces 30). The gripping structure is considered to be embossments 36. Structures 36 are raised above the flat surface 30; therefore, they satisfy the markush member of embossments. The angled shoulder surfaces are 34. They form a shoulder and are angled. The convex surfaces of Lichstein are fully capable of being gripped.

With respect to claims 19,20,22,23 (as best understood), Lichstein discloses a barrel 16 with a gripping area 32. The gripping area has two concave surfaces which are considered to be the depressions that are disclosed in column 4, lines 14-24. The gripping structure is considered to be embossments 36. Structures 36 are raised above the flat surface 30; therefore, they satisfy the markush member of embossments. The angled shoulder surfaces are 34. They form a shoulder and are angled.

3. Claims 3,8,15,21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Applicant's arguments filed 12-12-02 have been fully considered but they are not persuasive.

The argument with respect to claim 1 is moot based on a new grounds (really just a new reasoning) of rejection. Lichstein discloses embossments 36 that satisfy a member of the markush grouping for claim 1.

With respect to claim 9, applicant has argued that Lichstein does not disclose "aligned". The examiner disagrees. Lichstein discloses embossments and they are aligned with the outer surface of the flat surface. The bottom of the embossment is

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aligned with the flat surface. The term "aligned" from the claim is very broad and does not really mean that much unless the specific manner of alignment is claimed.

With respect to claim 13, the area between the flat surfaces is a convex structure that is fully capable of being gripped; therefore it is reasonable and proper to call this structure a convex gripping structure. The term "gripping" added to the claims by amendment has to do with the intended use of the device because a person using the device can grip it wherever they want to. The convex surfaces of Lichstein are fully capable of being gripped by a user. With respect to the second argument for claim 13, the way the claim is drafted it allows for the finger grip area to have the gripping structure, contrary to the argument made by applicant. The claim is a little broader than what is being argued.

With respect to claim 19, the argument presented by applicant's counsel is not addressing the rejection of record. The rejection of record did not state that 30 and 34 are a gripping structure. The examiner stated that the depression disclosed in column 4, lines 14-24 is what was interpreted as the gripping structure. Applicant's argument is not addressing the rejection of record as set forth by the examiner and is non-persuasive.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for

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the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DR
January 26, 2003



DENNIS RUHL
PRIMARY EXAMINER